

46 Am. Jur. 2d Judges § 148

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

5. Prior Participation in, Connection with, or Knowledge of the Case or Parties as Grounds for Disqualification

b. Prior Participation in or Connection with Case as Judge as Grounds for Disqualification

§ 148. Participation in prior proceedings in same case as grounds for disqualification of judge

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  47(2), 48

A trial judge's participation in a previous proceeding in a case does not ipso facto render the judge disqualified to preside at the trial,¹ although pursuant to the Code of Judicial Conduct, a judge should disqualify him- or herself when the judge previously presided as a judge over the matter in another court.² It has been found that a judge should honor a request for disqualification where prejudicial information is received in a pretrial proceeding that would be otherwise inadmissible during the trial of the case.³ In addition, a trier who has heard evidence in secret at a prior proceeding may be subject to a per se rule of disqualification.⁴

A judge is not disqualified to sit in a trial on the merits by having heard and decided a preliminary proceeding in the same cause,⁵ on the basis that a judge is uniquely capable of distinguishing the issues and of making an objective determination based upon appropriate legal criteria, despite the awareness of facts which cannot properly be relied upon in making the decision.⁶ In the absence of evidence of bias, prejudice, or other disqualifying factors, a judge who has earlier ruled on a motion for summary judgment is not automatically disqualified from hearing a subsequent motion for relief from the ruling.⁷

In criminal cases, pretrial involvement by a judge does not disqualify the judge from later presiding over the defendant's criminal trial,⁸ and thus a judge is not disqualified because he or she had ordered the grand jury which indicted the defendant, and had presided throughout the grand jury proceedings, and had passed on numerous preliminary motions.⁹ However, due process is violated where a judge acts as a grand jury and then tries the very persons accused as the result of his or her investigation.¹⁰ A trial judge's prior issuance of a search warrant in a case does not automatically require the judge to recuse him- or herself

from trying the case.¹¹ Moreover, a judge is not disqualified from ruling on a defendant's motion to suppress evidence seized pursuant to a search warrant on the basis of the trial judge's role as the issuing magistrate of the search warrant,¹² although there is authority that a trial judge who is required to rule upon the validity of a search warrant which he or she issues should recuse him- or herself.¹³

There is no rule of law which automatically disqualifies a judge who has presided at trial from subsequently considering a postconviction proceeding,¹⁴ although a court rule or statute may provide otherwise.¹⁵

CUMULATIVE SUPPLEMENT

Cases:

Judge's involvement with previous guardianship proceedings did not warrant recusal in action by estate against guardian of decedent seeking return of property transferred to guardian, where guardian did not disclose during discovery or in response to pretrial order that he intended to use evidence concerning guardianship proceedings or call judge as witness. *Estate of Ducheneaux*, 2018 SD 26, 909 N.W.2d 730 (S.D. 2018).

[END OF SUPPLEMENT]

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Footnotes

- 1 *Heard v. State*, 574 So. 2d 873 (Ala. Crim. App. 1990); *King v. Superior Court In and For Maricopa County*, 108 Ariz. 492, 502 P.2d 529, 60 A.L.R.3d 172 (1972); *People v. Campbell*, 94 P.3d 1186 (Colo. App. 2004); *Klein v. Klein*, 153 Vt. 551, 572 A.2d 900 (1990).
- 2 A.B.A. Code of Judicial Conduct, Canon 2, Rule 2:11(A)(6)(d).
- 3 *Com. v. Reddix*, 355 Pa. Super. 514, 513 A.2d 1041 (1986).
- 4 *Sherryland, Inc. v. Snuffer*, 150 N.H. 262, 837 A.2d 316 (2003).
- 5 *Heard v. State*, 574 So. 2d 873 (Ala. Crim. App. 1990); *People v. Davenport*, 173 A.D.2d 633, 570 N.Y.S.2d 219 (2d Dep't 1991).
- 6 *People v. Moreno*, 70 N.Y.2d 403, 521 N.Y.S.2d 663, 516 N.E.2d 200 (1987).
- 7 *In re Badger*, 43 Ohio St. 3d 601, 538 N.E.2d 1023 (1989).
- 8 *People v. Cunningham*, 2012 IL App (3d) 100013, 358 Ill. Dec. 14, 964 N.E.2d 683 (App. Ct. 3d Dist. 2012).
- 9 *Heard v. State*, 574 So. 2d 873 (Ala. Crim. App. 1990).
- 10 *In re Murchison*, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955).
- 11 *David v. State*, 295 Ark. 131, 748 S.W.2d 117 (1988).
- 12 *Heard v. State*, 574 So. 2d 873 (Ala. Crim. App. 1990); *Minks v. Com.*, 427 S.W.3d 802 (Ky. 2014); *Vandegrift v. State*, 82 Md. App. 617, 573 A.2d 56 (1990); *State v. Poole*, 472 N.W.2d 195 (Minn. Ct. App. 1991); *In re C.M.*, 166 N.H. 764, 103 A.3d 1192 (2014); *People v. Liberatore*, 79 N.Y.2d 208, 581 N.Y.S.2d 634, 590 N.E.2d 219 (1992).
- 13 *Bliss v. State*, 282 Ark. 315, 668 S.W.2d 936 (1984).
- 14 *Travis v. State*, 283 Ark. 478, 678 S.W.2d 341 (1984); *People v. House*, 202 Ill. App. 3d 893, 148 Ill. Dec. 627, 560 N.E.2d 1224 (4th Dist. 1990); *Johnson v. State*, 486 N.W.2d 825 (Minn. Ct. App. 1992); *State v. Joubert*, 235 Neb. 230, 455 N.W.2d 117 (1990); *State v. Pinno*, 2014 WI 74, 356 Wis. 2d 106, 850 N.W.2d 207 (2014).
- 15 *Pfaff v. State*, 85 Md. App. 296, 583 A.2d 1097 (1991); *Steadman v. State*, 806 S.W.2d 780 (Tenn. Crim. App. 1990); *In re Barrows*, 181 Vt. 283, 2007 VT 9, 917 A.2d 490 (2007).

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